

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)

Revival Animal Health, Inc.)
1700 Albany Place SE)
Orange City, Iowa 51041)

Respondent)

Docket No. FIFRA-07-2007-0024

CONSENT AGREEMENT AND FINAL ORDER

This proceeding for the assessment of civil penalties was initiated on or about September 27, 2007, pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §136l, when the United States Environmental Protection Agency (Complainant or EPA) issued a "Complaint and Notice of Opportunity for Hearing" to Revival Animal Health, Inc. (Respondent).

The Complaint charged Respondent with violating FIFRA §§ 12(a)(1)(A), 12(a)(1)(E); 7 U.S.C. § 136j (a)(1)(A), 7 U.S.C. § 136j (a)(1)(E). Respondent timely filed its Answer and Affirmative Defenses on December 17, 2007.

Subsequently, Complainant and Respondent entered into negotiations in an attempt to resolve disputed allegations in the Complaint. This Consent Agreement and Final Order (CAFO) set forth herein below is the result of these negotiations and represents settlement of this Complaint.

CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

1. This CAFO is being entered into by the parties in full settlement of, and release from all FIFRA civil penalties that might have attached as a result of allegations in the Complaint. The Respondent has read the Consent Agreement, finds it reasonable, consents to the issuance and its terms and explicitly waives its rights to further request a hearing on the Complaint, this Agreement, or the Final Order.

2. Respondent admits the jurisdictional allegations of the Complaint.

3. By this CAFO, Respondent neither admits nor denies violations of FIFRA as set forth in the Complaint.

4. Respondent certifies by signing this CAFO that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et seq. and all regulations promulgated thereunder.

5. Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136~~l~~, the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project (SEP) and other relevant factors, EPA has determined that an appropriate total mitigated civil penalty to settle this action is in the amount of Three Thousand Four Hundred dollars (\$3,400).

6. Respondent consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph and the performance of the SEP.

7. Payment of the penalty shall be by cashier or certified check, due within thirty (30) days of the effective date this CAFO. The payment shall reference Docket Number FIFRA-07-2007-0024, made payable to "Treasurer, United States of America" in the amount of Three Thousand Four Hundred dollars (\$3,400) and remitted to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

A copy of the check shall simultaneously be sent to the following:

Jennifer Trotter
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101.

8. **SEP:** As part of the settlement of this matter, Respondent agrees to provide genuine, registered pest control products for dogs and cats to one or more not-for-profit animal organizations as set forth below. This pest control product will be used by the organization to control fleas, ticks and other pests related to human health issues and/or vectors of human diseases. All of the pest control product provided by Respondent must be used within the six month period described below in subparagraph c. Respondent agrees as follows:

a) Within sixty calendar days of the effective date of this CAFO, Respondent shall provide genuine, registered pest control product(s) for dogs and cats to one or more not-for-profit animal organizations located in Iowa, Nebraska, Missouri or Kansas. The value of the product(s) provided shall be not less than Nine Thousand Six Hundred dollars (\$9600.00) based upon the Respondent's wholesale cost of the product(s).

b) Within sixty-one calendar days of the effective date of this CAFO, Respondent shall submit an Interim SEP Report to Complainant. The Interim SEP Report shall (i) identify by name, complete address, and telephone number, each of the non-for-profit animal organizations to which Respondent distributed product(s) pursuant to subparagraph (a) above; (ii) identify the name, volume, and wholesale value of all product(s) provided to each organization; and (iii) provide documentation of the wholesale value of each product distributed.

c) Respondent shall obtain written confirmation from the recipient organization of the use of all of such product(s) by the recipient organizations within six months of the effective date of this CAFO.

d) Within seven months of the effective date of this CAFO, Respondent shall submit a SEP Completion Report to Complainant. The SEP Completion Report shall contain the following information:

- i) A detailed description of the SEP as implemented;
- ii) A description of any problems encountered in implementation of the project and the solution thereto;
- iii) A signed affidavit from each recipient organization, on organization letterhead, stating the quantity and type of product(s) received from Respondent, the quantity of product(s) used by the organization within the six month time period described above, and the number of and types of animals receiving the product. The affidavit shall be signed by an officer or a managing employee of the recipient organization;
- iv) A description of the specific environmental and/or public health benefits resulting from implementation of the SEP; and
- v) Certification that the SEP has been fully implemented pursuant to the provisions of the CAFO.

e) In itemizing its costs in the Interim SEP Report and the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and /or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

f) The Interim SEP Report and the SEP Completion Report shall include the statement of Respondent, through an officer, signed and certifying under penalty of law the following:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there may be significant penalties for submitting false information, including the possibility of fines and imprisonment, in violation with any applicable law.

g) The Interim SEP Report and the SEP Completion Report shall be submitted on or before the due date to:

Mark Leshner, WWPD
Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

h) Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEP shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations for FIFRA §§ 12(a)(1)(A) and 12 (a)(1)(E).

i) Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the activities undertaken as the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant, or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

j) Respondent agrees not to claim any funds expended in the performance of the SEPs as a deductible business expense for the purpose of Federal, state, or local taxes.

9. Stipulated Penalties: Respondent agrees to the payment of stipulated penalties as follows:

a) In the event Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP as set forth in Paragraph 8 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraphs, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (ii) and (iii) immediately below, if the SEP is not completed satisfactorily and timely pursuant to the agreement set forth in Paragraph 8, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of Nine Thousand Six Hundred dollars (\$9600.00);

(ii) If Respondent fails to timely and completely submit the Interim SEP Report or the SEP Completion Report required by Paragraph 8, Respondent shall be liable for and shall pay a stipulated penalty in the amount of \$30.00 for each day after the due date until a complete report is submitted; and

(iii) If the SEP is not completed in accordance with Paragraph 8, but the Complainant determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty;

b) The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

c) Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 7 above.

10. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the

United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§102.13(d) and (e).

11. This CAFO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval or endorsement of the product purchased by the Respondent and provided to the recipient organizations in connection with the SEP undertaken pursuant to this Agreement.

12. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to FIFRA for any violation based on transactions and inspections alleged in the Complaint. As of the date of this CAFO, EPA has not received any other complaints from the public, or otherwise been advised, of transactions allegedly involving misbranded or unregistered pesticide product distributed or sold by Respondent. Nothing in this CAFO is intended to nor shall be construed to affect the right of EPA or the United States to pursue criminal sanctions for a violation of law. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulation administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

13. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

14. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CAFO.

15. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

By: 

William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

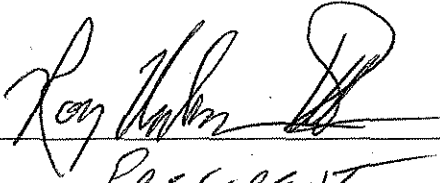
Date: 05/01/08

By: 

Jennifer Trotter
Attorney
Office of Regional Counsel


Date: 5-1-08

RESPONDENT:
Revival Animal Health, Inc.

By: 
Title: PRESIDENT
Date: 4-15-08

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective immediately.



Robert L. Patrick
Regional Judicial Officer

Date: May 15, 2008

IN THE MATTER OF Revival Animal Health, Inc., Respondent
Docket No. FIFRA-07-2007-0024

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Jennifer Trotter
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Richard L. Green, Esq.
Stinson Morrison Hecker, LLP
1201 Walnut, Suite 2900
Kansas City, Missouri 64106


Copy by First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20005

and

The Honorable William B. Moran
Administrative Law Judge
U. S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20005

Dated: 5/16/08


Kathy Robinson
Hearing Clerk, Region 7